OCT 2 1975
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-334

KENNETH E. NORTH,
Petitioner,

vs.

PATRICIA ANNE SANTEE,
Formerly PATRICIA ANNE NORTH,
Respondent,

PETITION FROM THE SUPREME COURT OF KANSAS
KANSAS SUPREME COURT CASE NO. 47701

KENNETH E. NORTH
5537 Neosho Lane
Shawnee Mission, Kansas 66205

PETITIONER, PRO SE

JOHN H. JOHNTZ, JR.
PAYNE & JONES, CHARTERED
The Tower Building
Olathe, Kansas 66061

ATTORNEYS FOR RESPONDENT

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BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

Petitioner's request for a writ of certiorari from this Court moves laboriously through the development of basic constitutional law with regard to litigants' rights to due process.

No one argues with him there, but his application of that constitutional principle to this case is absurd. At bottom, his argument is that the Court made a certain statement at the conclusion of the trial of this case and that statement proves that the court had pre-judged the case and, hence, not given petitioner a fair hearing. In fact, the statement indicates quite the opposite. The statement:

> "I cannot help but look back at the hearing I had...concerning the need for and the futility of marriage counseling.
>
> "The Court, after having heard all of that evidence, made a decision that it still feels was correct from the evidence, that it would be futile in this particular case for the parties to try to resurrect a marriage that is already buried, and it is simply serving no good reason to put people through a situation of anguish, frustration and additional expense if the marriage is not viable." (ROA 79)

It is submitted that even by a casual reading of those words, it is clear that the Court meant that it "made a decision" at the end of the hearing on the petitioner's motion for marriage counseling that to order marriage counseling "would be futile" and that it would simply serve "no good reason to put people through a situation of anguish, frustration and additional expense (of marriage counseling) if the marriage is not viable". The Court is also saying that now (at the time the words were spoken) after the trial of the divorce itself "it <u>still</u> feels it was correct from the (additional) evidence" (italics added) adduced in the trial of the divorce itself, in

again finding that the marriage is not viable and that the grounds of incompatibility lie.

In short, the Court is saying that at the conclusion of the first hearing it found that the marriage appeared to be in an irreconcilable posture (which the Court properly was required to do in order to justify denial of defendant's own motion for marriage counseling), and that <u>again</u> at the conclusion of the trial of the divorce itself the Court also found that from the additional evidence therein adduced, it still felt that the marriage was in an irreconcilable posture.

The Court listened to evidence in both hearings and concluded that there was no evidence in the second hearing that would lead to a different conclusion than the evidence adduced in the first hearing. The petitioner appears to not comprehend that the Court had no choice but to make a decision with regard to the essential viability of the marriage at the end of the first hearing on a motion for marriage counseling. That fact does not in and of itself mean that the Court did not listen in an open and fair-minded way to all of the additional evidence adduced in the trial of the divorce itself.

The petitioner's point with regard to due process is not only totally without merit, but is particularly hypocritical in view of the fact that petitioner did not present any new evidence of any sort in the second hearing and, therefore, could hardly expect the Judge to arrive at a different conclusion.

BLEED THROUGH

(Interestingly, if this Court were to hold that a trial court, after hearing evidence on a motion for marriage counseling, could not find that the marriage was not in a posture for likely reconciliation because such a finding constituted a prejudgment of the existence of grounds for divorce at a later trial, a trial court would be in a position where it could never deny a motion for marriage counseling for fear that such denial constituted a prejudgment of the grounds for divorce.)

Finally, the petitioner complains that the Supreme Court of Kansas did not address itself to this particular argument. Not only is the Kansas Supreme Court not required to explain its review in detail of each of the petitioner's assertions, but particularly in view of the fact that this particular assertion is patently void of any substance (and in fact was not even argued by the petitioner himself in oral argument before the Kansas Supreme Court), it certainly is little wonder that it was not specifically addressed by the Kansas Supreme Court.

Respondent respectfully submits that petitioner's assertion of a lack of due process in the trial of the issue of the parties' incompatibility is utterly without merit and a writ of certiorari should not issue.

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

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PATRICIA ANNE SANTEE,
formerly PATRICIA ANNE NORTH,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Comes now respondent and moves the Court for leave to proceed in this matter in forma pauperis. In support thereof, respondent has attached an affidavit hereto.

JOHN H. JOHNTZ, JR.
PAYNE & JONES, CHARTERED
The Tower Building, Box 151
Olathe, Kansas 66061
913 782-2500

ATTORNEY FOR RESPONDENT

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, pursuant to Rule 33 of the United States Supreme Court, a copy of the above and foregoing Motion for Leave to Proceed In Forma Pauperis was deposited in the United States Mail, postage prepaid, to Kenneth E. North, 5537 Neosho Lane, Shawnee Mission, Kansas 66205, Petitioner Pro Se, this 17th day of October, 1975.

John H. Johntz, Jr.

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REMAINDER OF PAGE

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Respondent.

AFFIDAVIT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

Patricia Anne Santee, of lawful age, upon her oath being first duly sworn, states:

1. That she is the respondent herein.

2. That she has no interest whatsoever in any real property nor has she ever had.

3. That the only property she owns is an automobile and a small amount of furniture.

4. That she is not employed and has not been employed for some months.

Further, affiant saith not.

Patricia Anne Santee

Subscribed and sworn to before me this _____ day of October, 1975.

BLEED THROUGH

v. No. 75-334

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Notary Public

My commission expires: